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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Bickler, et al.,) No. CV-09-00726-PHX-DGC
10 Plaintiffs,) **ORDER**
11 vs.)
12 Senior Lifestyle Corp.,)
13 Defendant.)
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15 Defendant has filed a motion to extend the disclosure deadline in this case. Dkt. #92.
16 Plaintiffs have filed a response. Dkt #97. Defendant seeks an expedited decision, and asks
17 the Court to extend the fact and expert discovery deadlines by approximately 60 days. For
18 the reasons set forth below, the Court will deny the motion.

19 At a case management conference held on June 18, 2009 pursuant to Rule 16 of the
20 Federal Rules of Civil Procedure, the Court established a firm schedule for this litigation.
21 The Court explained at the conference that it would not be inclined to grant extensions of the
22 schedule. The Case Management Order entered after the conference contained the following
23 warning:

24 The Deadlines Are Real. The parties are advised that the Court intends
25 to enforce the deadlines set forth in this Order, and should plan their
litigation activities accordingly.

26 Dkt. #22, ¶10. The Case Management Order established fact and expert deposition deadlines
27 of December 18 and November 16, 2009, respectively.
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1 The Court has reviewed its Livenote transcript of the case management conference.
2 Plaintiffs counsel sought a 90-day discovery period due to the age and infirmity of their
3 clients. Defense counsel stated that such a schedule was “ambitious,” and sought additional
4 time. The Court agreed that 90 days was too short, and set a fact discovery deadline six
5 months later. As noted, however, the Court cautioned the parties at the hearing and in its
6 subsequent order that it would hold them to the schedule.

7 The parties subsequently sought an extension of these deadlines. Dkt. #51. The Court
8 granted the extensions, somewhat reluctantly, and extended the fact and expert deposition
9 deadlines to January 31 and February 15, 2010, respectively. Dkt. #59. The Court warned
10 the parties that it “**will not grant additional extensions absent truly extraordinary**
11 **circumstances.**” *Id.* ¶7 (emphasis in original). With these extensions, the parties have been
12 afforded more than seven months to complete fact discovery and eight months to complete
13 expert discovery. Moreover, these extended deadlines fall approximately one year after the
14 case was filed on February 19, 2009. *See* Dkt. #1-2 at 2.

15 Rule 16 requires district judges to enter case management schedules and provides that
16 such schedules “may be modified only for good cause[.]” Fed. R. Civ. P. 16(b)(4); *see*
17 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992). “Good cause”
18 exists when a deadline “cannot reasonably be met despite the diligence of the party seeking
19 the extension.” Fed. R. Civ. P. 16 Advisory Comm.’s Notes (1983 Am.). Thus, “Rule
20 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the
21 amendment.” *Johnson*, 975 F.2d at 609.

22 Defendant bases its request for another two months of discovery on several factors:
23 the parties chose to engage in a mediation and therefore did not start discovery until after
24 August, Plaintiffs have recently disclosed an additional treating physician and there is not
25 time to depose him, and Defendant has had difficulty scheduling depositions of Plaintiffs’
26 various treating physicians. Defendant also claims that Plaintiffs’ counsel have been
27 uncooperative in scheduling discovery, although the parties’ correspondence suggests
28 otherwise. *See* Dkt. #97, Exhibits.

1 The Court concludes that Defendant has not shown good cause for an extension of the
2 discovery deadlines. This case was filed in February of 2009 and a six-month discovery
3 schedule was established in June of 2009 with the warning that it would be enforced.
4 Despite this schedule and the Court's warning, the parties did not start depositions until
5 October. Dkt. #92 at 7. The parties' memoranda and attachments also reveal that expert
6 depositions were largely postponed until this month, resulting, predictably, in scheduling
7 problems.

8 Plaintiffs were required to disclose all experts and the identities of all treating
9 physicians by October 30, 2009. *See* Dkt. ##17 ¶5(e), 59 ¶1. Defendant has thus had almost
10 three months to complete their depositions. Postponement of that task has led to the current
11 scheduling problems, but Defendant has not shown that the depositions could not have been
12 completed within the Court's schedule through reasonable diligence. Nor do the other issues
13 raised by Defendant make such a showing. The parties' decision to stop discovery while a
14 mediation was held was made with full knowledge of the Court's schedule and the Court's
15 warning, and without any request to adjust the schedule. Defendant complains that Plaintiffs
16 only recently disclosed another treating physician, but the deadline for identifying such
17 physicians was October 30, 2009. *See* Dkt. ##17 ¶5(e), 59 ¶1. As a general rule, the Court
18 will not allow parties to call witnesses disclosed after the Court's deadline.

19 In short, Defendant has not shown that discovery in this case could not have been
20 completed within the extended schedule through reasonable diligence. Defendant therefore
21 has not shown "good cause" for an extension as required by Rule 16(b)(4).

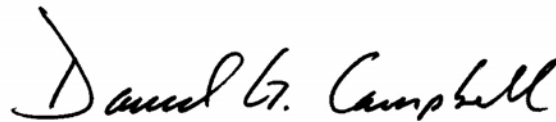
22 Moreover, the Court stated in its order of November 11, 2009, that further extensions
23 would not be granted absent truly extraordinary circumstances. Dkt. #50 ¶7. Defendant has
24 not shown that truly extraordinary circumstances prevented it from complying with the
25 Court's schedule.

26 "In these days of heavy caseloads, trial courts . . . set schedules and establish
27 deadlines to foster the efficient treatment and resolution of cases." *Wong v. Regents of the*
28 *Univ. of Cal.*, 410 F.3d 1052, 1060 (9th Cir. 2005). "Parties must understand that they will

1 pay a price for failure to comply strictly with scheduling and other orders[.]” *Id.* “As the
2 torrent of civil and criminal cases unleashed in recent years has threatened to inundate the
3 federal courts, deliverance has been sought in the use of calendar management techniques.
4 Rule 16 is an important component of those techniques.” *Johnson*, 975 F.2d at 611.

5 **IT IS ORDERED** that Defendant’s motion for expedited consideration (Dkt. #92) is
6 **granted** and Defendant’s motion to extend deadlines (Dkt. #92) is **denied**.

7 DATED this 28th day of January, 2010.

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David G. Campbell
United States District Judge

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